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ENERGY AND ENVIRONMENT UPDATE **May 20, 2012**

Energy and Climate Debate

Energy issues continue to play a key role in policy debates – both in Washington and on the campaign trail.

The House passed a motion, 261-152, May 17 to instruct the transportation reauthorization conferees to include the Keystone XL pipeline in the final bill. The House also passed, 245-169, a motion to instruct the conferees to include text of the Buy American legislation. Though it remains to be seen whether either provision or another House approved inclusion of language to prevent the Environmental Protection Agency from regulating coal ash as a hazardous waste will be included in the final agreements, conferees continue to negotiate the issues, with each side waiting for the other to blink.

The House and Senate continue to examine fiscal year 2013 Defense Department authorization proposals. The House approved its version of the National Defense Authorization Act (HR 4320) May 18 on a vote of 299-110, including a controversial biofuels amendment from Rep. K. Michael Conaway (R-TX) that would limit the military's ability to purchase advanced biofuels as well as a provision that would allow DoD to buy transportation fuel from unconventional sources. The Senate will begin marking up its version of the funding bill May 22.

The Commerce Department issued a preliminary antidumping ruling May 17 regarding SolarWorld's charge that Chinese solar manufacturers are illegally selling products below market price in order to capture the global market. The antidumping tariffs for most companies will be 31.18%, with some as high as 250%. In March, the agency's preliminary verdict on unfair subsidies found that the Chinese government is illegally subsidizing solar exports to the United States, and announced a first round of countervailing duties of up to 4.73 percent. The tariffs will be combined. The day after the announcement, China's Ministry of Commerce (MOFCOM) issued a statement expressing "strong dissatisfaction" with the ruling, while the China Machinery and Electronic Products Import and Export Chamber of Commerce also issued a statement arguing the Chinese solar industry thrives owing to better management and economies of scale, not unfair subsidies.

Congress

Air Rules Delay Passes House Committee

The House Energy and Commerce Committee approved legislation (H.R. 4471) May 17 that would delay three Environmental Protection Agency air pollution regulations, clearing the bill for consideration by the full House in late June. The committee also rejected six Democratic amendments that would have stripped the measure of some of its provisions. The Gasoline Regulations Act would require the administration to form a committee that would issue a report on how the three regulations – Tier 3 vehicle and gasoline standards, greenhouse gas standards for petroleum refineries, and ozone air quality standards – impact gasoline, diesel fuel, and natural gas prices, and the agency would not be able to finalize the rules for an additional six months.

Standardize Sustainability Reporting

During a Senate Environment and Public Works Subcommittee on Children's Health and Environmental Responsibility hearing May 16, executives from FedEx, Intel, and other companies called for standardizing methods to measure a company's environmental performance. They are concerned that a company may rank high in one sustainability ranking system and low on another due to different methodologies.

Path Forward on Efficiency Legislation

Senator Jeanne Shaheen (D-NH) said May 15 that staff for Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) met May 7 to discuss floor time for her Energy Savings and Industrial Competitiveness Act of 2011 (S. 1000). The legislation, cosponsored by Senator Rob Portman (R-OH), would authorize \$1 billion for energy efficiency financing programs, national building codes, and other conservation measures, and is considered the most likely possibility for significant movement on energy policy this Congress. The language was scaled back during a July 2011 Energy and Natural Resources Committee markup, and was approved 18-3. Representative Charlie Bass (R-NH) introduced companion legislation in the House, the Smart Energy Act (H.R. 4017).

Farm Bill Action Urged

Forty-four senators led by Senator Mike Johanns (R-NE) sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) May 15 urging them to bring a five-year farm bill to a vote, after waiting nearly three weeks for a commitment from Senate leadership. Senate Agriculture Committee Chair Debbie Stabenow (D-MI) predicted last week that the Senate will take it up as one of its first items after returning from recess the week of June 4.

Federal Lands Energy Bills

The House Natural Resources Committee approved three bills May 16 to hasten planning, leasing, and permitting for energy projects on federal onshore lands. The measures, the Planning for American Energy Act (H.R. 4381), the Providing Leasing Certainty for American Energy Act (H.R. 4382), and the Streamlining Permitting of American Energy Act (H.R. 4383) passed out of committee on a largely partisan vote. Republicans favor the proposals because they are designed to reduce red tape and hasten energy development, while Democrats object that they would reduce environmental safeguards, impede the right of citizens to petition their government, and favor energy use over other uses of federal lands.

Fracking Budget Request Defended

Appearing before the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies May 16, Environmental Protection Agency Administrator Lisa Jackson defended the agency's fiscal year 2013 funding request for additional research on the environmental impact of fracking. The budget request includes \$14 million to fund research on fracking, with \$8 million to fund a joint effort by the agency, the Department of Energy, and the U.S. Geological Survey, for a total of \$45 million to fund additional research. The agency is on track to release initial results on the impact of fracking on drinking water by the end of the year.

Veto Threatened Over DOD Biofuel Limits

The White House issued a Statement of Administration Policy May 15 threatening to veto the fiscal year 2013 National Defense Authorization Act (H.R. 4310) because it would limit the agency's ability to procure biofuel. The president also objects to a provision that would exempt the agency from a measure barring federal agencies from procuring synthetic and alternative fuels that have a larger lifecycle carbon footprint

than conventional fuels. The House approved the defense funding measure May 17 and the Senate Armed Services Committee is scheduled to begin marking up its version of the legislation May 22.

CES Hearing

The Senate Energy and Natural Resources Committee held a hearing May 17 to consider Chairman Jeff Bingaman's (D-NM) Clean Energy Standard Act of 2012 (S. 2146). Department of Energy acting energy undersecretary David Sandalow and Howard Gruenspecht, acting head of the Energy Information Administration, said that the proposal would not lead to higher energy bills for consumers despite causing a projected increase in electricity rates. According to a May 2 EIA report, the projected average end-use electricity price would increase by less than 4 percent in 2025 and 18 percent by 2035 while reducing power sector emissions by 20 percent below their reference case in 2025 and by 44 percent in 2035. The legislation would require utilities to obtain a certain percentage of their electricity from clean sources, including renewable energy, nuclear power, natural gas, and clean coal, beginning with 24 percent in 2015. Though there is little chance the measure will be enacted this year, many are hopeful of its future prospects.

E&C CO2 Letter to EPA

On May 17, in a letter to Environmental Protection Agency Administrator Lisa Jackson, House Energy and Commerce Committee Chairman Fred Upton (R-MI) and Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) asked whether the carbon capture and storage systems needed for new coal-fired power plants to comply with the proposed new source performance standards for carbon dioxide are commercially viable and suggested that EPA provide a blanket regulation on carbon dioxide emissions as opposed to limiting emissions by fuel type. Public EPA hearings on the proposed rule are scheduled for May 24 in Chicago and Washington.

House Farm Bill Hearing Addresses Energy Titles

On May 18, in the final hearing before the bill is written, the House Subcommittee on Conservation, Energy, and Forestry heard testimony from witnesses representing biofuels and other energy companies urging the continuation of the Farm Bill's energy provisions, despite lean budgetary times. The Senate version of the farm bill, the Agriculture Reform, Food and Jobs Act of 2012, released earlier this year contains \$800 million of funding for the USDA's energy programs over five years. The current farm bill, the Food, Conservation, and Energy Act of 2008, included more than \$1 billion in mandatory energy program spending and expires September 30.

Critical Minerals Regulatory Streamlining Bill Clears House Committee

On May 16, the House Natural Resources Committee approved Rep. Mark Amodei's (R-NV) National Strategic and Critical Minerals Production Act (H.R. 4402) on a 27-10 vote, a bill that would streamline the regulation of developing and mining minerals judged critical to energy, domestic industries, or national defense. Production of those minerals, vitally important to the lighting, turbine, and battery technology industries, is dominated by China, and the bill would seek to foster their domestic development by limiting the total review process for issuing permits to 30 months, unless all parties agree to an extension.

Legislation Introduced

Senators Sherrod Brown (D-OH) and Chuck Schumer (D-NY) introduced legislation (S. 3183) May 15 to prevent Chinese solar panel manufacturers from benefiting from American tax credits. The measure would modify the Residential Efficient Property Credit and the Business Energy Investment Tax Credit, requiring recipients to ensure that 70 percent of the panel components are made domestically; if final panel assembly occurs in the United States, 50 percent of the parts must be made domestically.

Representative Paul Gosar (R-AZ) introduced legislation (H.R. 5744) to address the forest health, public safety, and wildlife habitat threat presented by the risk of wildfire on National Forest System lands and public lands managed by the Bureau of Land Management by requiring the Secretaries of Agriculture and Interior to expedite forest management projects relating to hazardous fuels reduction, forest health, and economic development.

Representative Keith Ellison (D-MN) introduced a bill (H.R. 5745) to eliminate certain subsidies for fossil fuel production.

Representative Jeff Flake (R-AZ) introduced legislation (H.R. 5791) May 16 to provide for reasonable and necessary access to Wilderness Areas for the restoration of water sources, supplies, or infrastructure during a state of emergency declared by the Governor of the state.

Representative Peter Welch (D-VT) introduced legislation (H.R. 5825) May 17 to amend the Farm Security and Rural Investment Act of 2002 to reauthorize and improve the Rural Energy for America Program.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing May 22 to consider the American Energy Innovation Council's latest report, *Catalyzing American Ingenuity: The Role of Government in Energy Innovation*. Witnesses include Norman Augustine, retired chairman and CEO, Lockheed Martin; Ethan Zindler, head of policy analysis, Bloomberg New Energy Finance; and Jesse Jenkins, director of energy and climate policy, Breakthrough Institute.

Department of Energy

\$500,000 For HI Wave Energy

The Department of Energy announced May 18 \$500,000 available this year to test the technical readiness of technologies that can harness wave energy to supply renewable energy to highly populated coastal regions. The funding will support one project to deploy and test a wave energy conversion device for one year at the U.S. Navy's Wave Energy Test Site in Kaneohe Bay, Hawaii.

Dishwasher, Washing Machine Standards

The Department of Energy released direct final rules May 16 requiring manufacturers to make dishwashers and washing machines more efficient. The new standards will require residential dishwashers to use 15 percent less energy and reduce water use by more than 20 percent. Top-loading residential washing machines will be required to use 33 percent less energy and 19 percent less water. The standards become effective for dishwashers in 2013 and for washing machines in 2015. The standards are expected to save consumers \$20 billion in energy and water costs over 30 years.

Fuel Cell Milestone

The Department of Energy announced May 14 that nearly 1,200 fuel cells were deployed as a result \$18.5 million in Recovery Act funding. Over the last three years, the fuel cells have been increasingly used in emergency backup power units and material handling equipment.

DOE Failed EV Audits

The Office of the Inspector General issued a special report last week finding that the Department of Energy failed to obtain required financial and compliance audits from companies that received federal grants to develop the plug-in hybrid electric vehicle market. As part of the president's goal of putting a million electric vehicles on the road by 2015, the agency awarded \$400 million in Recovery Act funds by May 2010 to 12 nonprofit groups and six for-profit companies as part of its Transportation Electrification Program. The report urges the agency to create a formal system for tracking audits and annual cost reports.

Lighting Awards

During the LIGHTFAIR International conference May 15, the Department of Energy announced the winners of the indoor lighting category of the fourth-annual Next Generation Luminaires Design Competition. The competition, sponsored by the agency, the Illuminating Engineering Society of North America, and the International Association of Lighting Designers, was launched in 2008 to promote excellence in the design of energy efficient LED commercial lighting fixtures. Solid state lighting has the potential to save Americans \$30 billion annually by 2030.

USEC Deal Negotiated

Department of Energy Secretary Steven Chu announced May 15 a plan to keep the struggling uranium enrichment plant in Paducah, Kentucky, operating for one more year. The deal, which took months to complete and involves five partners and multiple transactions, will keep the U.S. Enrichment Corporation plant open for a year while it also seeks funds for a new Ohio plant with advanced technology. The new agreement will avoid having to close down the facility and spend millions on environmental cleanup costs as well as provide a domestic source for tritium production, which is needed for the weapons stockpile.

Department of Interior

Offshore Wind Advanced

Finding no competitive interest from other developers, the Interior Department announced May 14 that it is advancing approval of an 800-mile undersea transmission line to connect future wind farms off the Atlantic Coast. The agency' determination allows the Bureau of Ocean Energy Management to begin the environmental reviews necessary to grant project developer Atlantic Grid Holdings, a right-of-way to use public land on the Outer Continental Shelf. The estimated \$5 billion Atlantic Wind Connection Google-backed project would form the backbone of a transmission system that could connect 7,000 MW of power from multiple wind farms off the East Coast, using two parallel high-voltage direct current transmission lines under the ocean.

Water Availability

The U.S. Geological Survey released a study on the effects of climate change May 16 predicting for the first time changes in water availability at the local level in 14 water basins nationwide. The Precipitation Runoff Modeling System applies information from downscaled general circulation model projections to local watersheds, where impacts of climate change on water availability will depend on local conditions.

Department of Transportation

PHMSA Battery Harmonization

Lithium battery manufacturers, electronics retailers, and shippers submitted favorable comments last week in support of a Pipeline and Hazardous Materials Safety Administration proposal to harmonize federal hazardous materials regulations on batteries with international standards on the air transport of hazardous goods. The agency is considering whether to harmonize its hazardous materials regulations with the lithium battery provisions in the recently adopted 2013-2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air, and published a proposed rule in April to align its regulations with the provisions.

Environmental Protection Agency

Biomass Permitting Delay Defended

The Environmental Protection Agency filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit May 14 defending its decision to postpone greenhouse gas permitting for sources that burn biomass as part of its effort to phase in the permitting program beginning with the largest sources. The agency contends that deferring the permitting requirements until 2014 is justified under the court doctrines of "administrative necessity," "absurd results," and "one step at a time," which would allow the agency to deviate from the text of the Clean Air Act if implementing it as written would be impossible. Industries that burn biomass have until June 21 to file their briefs in support of the agency.

E15 Vehicle Problems

The Coordinating Research Council released a study May 16 finding that gasoline containing 15 percent ethanol caused mechanical and performance failures in two of eight vehicle models tested. The report, *Intermediate-Level Ethanol Blends Engine Durability Study*, tested the impacts of E15 on eight vehicle types from years 2011 through 2009, all of which have been approved by the Environmental Protection Agency to use the blend. The Department of Energy criticized the study because it did not also test the impacts of E10, which accounts for 90 percent of the gasoline sold in the United States.

Environmental Exports

Environmental Protection Agency Administrator Lisa Jackson announced May 14 that a collection of federal agencies will begin an initiative to increase exports of American environmental technologies. The Environmental Technologies Export Initiative aims to increase environmental technology exports and create a systematic approach for environmental businesses looking to expand internationally, helping the National Export Initiative to reach its goal of doubling U.S. exports by 2014.

Navistar Case

During oral arguments May 14, the U.S. Court of Appeals for the District of Columbia Circuit questioned the Environmental Protection Agency about why it did not provide for notice and comment on an interim final rule that allows Navistar Inc. to produce heavy-duty diesel engines that exceed nitrogen oxides limits if it pays nonconformance penalties. The agency maintains that it did not have to provide notice and comment because of the good cause exception in the Administrative Procedure Act. Navistar's competitors are challenging the rule.

EPA Boiler Standards to OMB

On May 17, the White House Office of Management and Budget received, and began the interagency review of, the Environmental Protection Agency's final emissions standards for major source boilers, area source boilers, and solid waste incinerators previously published by EPA in March 2011. The rule will only cover 5,500 boilers (or less than 1%) of the nation's boilers, while the rest are either already clean enough or could implement work practice standards to comply.

Federal Energy Regulatory Commission

Transmission Planning Reaffirmed

The Federal Energy Regulatory Commission reaffirmed May 17 its landmark transmission planning rule, Order 1000, which is aimed at removing barriers to building more transmission lines and to increasing renewable generation. Compliance filings are due October 11.

MATS Reliability Impact

The Federal Energy Regulatory Commission issued a policy statement May 17 outlining a narrow role for itself in determining whether the Environmental Protection Agency's new mercury and air toxics standards to limit power plant emissions will impact grid reliability. The commission determined that the ultimate decision on whether an extension should be granted to retrofit power plants rests with the Environmental Protection Agency. The December 21 rule gives generators three years to retrofit their plants to comply with the new requirements, and some generators will be eligible for a one or two year extension.

Government Accountability Office

Report Slams Pre-1978 Coal Fired Generation

On May 18, the Government Accountability Office released *Air Emissions and Electricity Generation at U.S. Power Plants*, a report requested by Senate Environment and Public Works Subcommittee on Oversight Chairman Sheldon Whitehouse (D-RI), finding that while highly inefficient, pre-1978 coal-fired power plants produce around half of US electricity, those same plants generate 75% of the sulfur dioxide, 64% of the total nitrogen oxides, and 54% of carbon dioxide emitted by all fossil-fuel plants. The plants produce more than 3 times as much sulfur dioxide, twice as much nitrogen oxide pollution, and 1.3 times as much carbon dioxide as their newer natural gas and coal counterparts.

General Services Administration

\$11.5 Million for Building Efficiency

The General Services Administration awarded an \$11.5 million contract May 14 to IBM to develop and install smart building technology in 50 of the federal government's highest energy-consuming buildings. The system will monitor building energy performance nationwide and send the data to a central cloud-based platform, which will allow for quick and efficient analysis, improving building efficiency and saving \$15 million annually.

Internal Revenue Service

Section 45 Announcement

On May 21, the Internal Revenue Service will publish Notice 2012-35, in Internal Revenue Bulletin 2012-21, to provide inflation adjustment factors and reference prices for determining, under section 45 of the tax code, the availability of renewable electricity production, refined coal production, and Indian coal production credits for the calendar year 2012.

Nuclear Regulatory Commission

Court Affirms Government Must Pay for Nuclear Waste Storage

On May 18, the U.S. Court of Appeals for the Federal Circuit upheld approximately \$142 million in damages to Yankee Atomic Electric Co., Maine Yankee Atomic Power Co., and Connecticut Yankee Atomic Power Co. to cover the costs, including Nuclear Regulatory Commission fees, of storing spent nuclear fuel that should have gone to the government's Yucca Mountain storage facility per agreements signed under the 1982 Nuclear Waste Policy Act. The court added an extra \$17 million for Yankee Atomic given the length of their storage.

States

NJ Questions Reliability Concerns

New Jersey's attorney general rejected arguments May 7 that forcing a Pennsylvania power generator to meet Clean Air Act limits on sulfur dioxide could force the plant to close and thus impair the reliability of the regional electricity grid. GenOn Energy warned in February that the two coal-fired units at its Portland site are among a group of plants that would close instead of face new Environmental Protection Agency mercury and air toxics standards.

CA Cap and Trade Revenue Plans

San Francisco-based policy research organization Next 10 released a series of reports May 17 offering California some economic and legal advice on how to spend the estimated billions of dollars the state expects to generate through the sale of greenhouse gas emissions allowances. California's cap and trade program is anticipated to generate between \$600 million and \$1.8 billion from auctions in the first year, with revenue expected to grow to \$5.8 billion by 2015. As the first step in developing recommendations for state lawmakers, the California Air Resources Board will host a public meeting May 24 to hear ideas on an investment strategy for the auction revenue.

International

Important Role for Rio+20

The June 20-22 Rio+20 conference in Brazil could play an important role in United Nations efforts to secure international agreements on climate change. The conference will officially focus on sustainable development issues, but could also become a key part of negotiations leading up to the 18th Conference of Parties to the U.N. Framework Convention on Climate Change in Doha, Qatar.

Green Climate Fund Meeting Delayed

The United Nations Framework Convention on Climate Change announced May 17 that the first meeting of the Green Climate Fund board of directors has been pushed back to late June or early July pending membership finalization. The meeting had been scheduled for May 31, but was delayed when it became clear that the 24 board members would not be selected during the current meeting of the subsidiary bodies to the UNFCCC, which runs through May 25 in Bonn. The fund, created at last year's Conference of Parties in South Africa, is designed to raise \$100 billion a year by 2020 to help developing countries mitigate and adapt to climate change impacts.

Cities Report Climate Impacts

The secretariat of the United Nations International Strategy for Disaster Reduction found May 16 that 79 percent of cities worldwide are reporting negative impacts attributable to climate change, resulting in hundreds of billions of dollars in damage. Citing the results of a global survey of 486 cities prepared by the Massachusetts Institute of Technology, the secretariat also concluded that 68 percent of reporting cities are pursuing adaptation planning, and stormwater was the most cited challenge.

Bonn Talks

Three thousand negotiators from 181 countries began meeting in Bonn May 14 at the 36th Meeting of the Subsidiary Bodies in the hope of continuing the momentum from last December's climate change summit in South Africa. The Ad Hoc Working Group on the Kyoto Protocol is working toward finalizing terms for the second commitment period. Last year the EU agreed to a second commitment running from 2013-2020 with another period thereafter, but the lengths and terms of each are still undecided as developed and developing nations address differences. The Ad Hoc Working Group on Long-Term Cooperative Action is discussing the universal, binding climate change regime, which would be finalized in 2015. Meetings run through May 25.

Chinese, Indian Airline GHGs

The European Commission said May 15 that airlines from China and India have systematically failed to comply with a requirement to provide data on their 2011 greenhouse gas emissions as part of their integration into the European Union Emissions Trading System. The two countries, along with the United States and others, have protested the inclusion of their airlines into the trading program. Under a 2008 rule, all airlines flying in and out of the EU have been included in the ETS since January 1.

Chinese Conservation and Efficiency

Tianjin China adopted new policies May 15 on energy conservation and building energy efficiency that will go into effect July 1. The two policies will help the municipality, one of China's designated low-carbon pilot areas, reduce its energy intensity 18 percent compared to 2010 levels by 2015. Businesses that consume more than 5,000 MT of standard coal-equivalent each year will have to submit usage data each March, beginning in 2013. They also will have to perform energy audits and efficiency tests and hire technicians to specifically manage and report energy consumption data. Companies that fail to follow the guidelines could face fines of nearly \$5,000. Specific regulations will be announced later.

Miscellaneous

Biodiversity Declining

The World Wildlife Foundation released a report May 15 finding that biodiversity continues to decline rapidly in developing countries and humans continue to consume natural resources significantly beyond the planet's ability to renew them. The *Living Planet Report 2012* shows a 28 percent decline in the population of land-based wildlife and marine life between 1970 and 2008. The biodiversity index measures trends in the size of 9,014 populations of 2,688 mammal, bird, reptile, amphibian, and fish species.

Ethanol Impacts Gas Price

Funded by the Renewable Fuels Association, Iowa State University reported last week that the ethanol production increase has reduced the price of gasoline in the United States by 29 cents a gallon from 2000 through 2011. The report, *The Impact of Ethanol Production on the U.S. and Regional Gasoline Markets: An Update to 2012*, further concluded that the greatest difference, 45 cents a gallon, occurred in the Midwest, while the difference was around 20 cents on the East Coast, West Coast, and Gulf Coast.

Chinese Smart Grid

The Energy Transition Research Institute recently released a study concluding that China will fail to meet its carbon and energy intensity targets unless it makes significant changes to its electricity grid. The report, *China Power: Benefits and Costs of the 'Strong, Smart Grid'*, found that the country must also use the first ever model devised outside China to integrate power supply and demand as well as economic drivers.

Citywide GHG Tracking

The C40 Cities Climate Leadership Group and ICLEI-Local Governments for Sustainability in collaboration with the World Bank Group, the United Nations Human Settlements Program, the U.N. Environment Program, and the World Resources Institute released a pilot protocol May 14 that aims to standardize how cities and communities measure and report their greenhouse gas emissions. The pilot *Global Protocol for Community-Scale Greenhouse Gas Emissions* includes a list of the minimum emissions data cities should collect and quantify, including emissions from residential and commercial buildings; air, water, and road transportation; wastewater treatment facilities; and other sources.

Fracking Best Practices Urged

Boston Common Asset Management, the Investor Environmental Health Network, and the Interfaith Center on Corporate Responsibility said May 16 that energy company shareholders increasingly are pressing for the application of best practices in fracking. Some 55 major investment organizations and institutional investors with nearly \$1 trillion in assets under management have united to support the best practices.