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ENERGY AND ENVIRONMENT UPDATE **May 27, 2012**

Energy and Climate Debate

Energy issues retained a central focus of debates last week in both the transportation reauthorization conference committee debates and in Administration calls to action.

After touring TPI Composites, a wind turbine blade manufacturer in Newton, Iowa, May 24, President Obama called on Congress to extend the 30 percent wind production tax credit, which is scheduled to expire at the end of the year, saying that such an extension is critical to saving American jobs. The president also called on Congress to expand the Section 48C Advanced Energy Manufacturing Tax Credit. According to a United Technologies/National Journal poll released last week, 64 percent of Americans support extending expiring tax credits for renewable energy and implementing a clean energy standard.

Senator James Inhofe (R-OK) said last week that getting final passage of the transportation reauthorization may require allowing at least one of the two proposals to be included, and indicated that the coal ash language may have a better chance of surviving in the final bill because it has generated less attention than the Keystone XL pipeline. Senator Barbara Boxer (D-CA), who chairs the conference committee, said May 23 that she remains opposed to both proposals, but acknowledged the need for compromise and reiterated that she intends to complete a conference report on reauthorization of federal surface transportation programs before the June 30 expiration of taxation and spending authority. She reported to Senate Majority Leader Harry Reid (D-NV) earlier in the week that 80 percent of all issues in the reauthorization had been resolved, and she expects the group, staff for which continue to discuss productively all of the major issues daily, to produce and circulate a conference report by early June. Eighty-one House members sent a letter to the Highway bill conference committee May 8 urging them to include in their final report provisions that would limit the Environmental Protection Agency's ability to regulate coal ash from power plants.

On May 24, the Environmental Protection Agency held a widely-attended public hearing in Chicago to address concerns about the proposed new source greenhouse gas rules published in April. Environmental and public health advocates pressed the Environmental Protection Agency for strong regulations, while industry groups and unions argued that the carbon capture technology that would be needed for most coal plants to comply will not be viable, or even available, within the next 10 years.

Congress

Bingaman Amenable to EPA Preemption

During remarks at a Geothermal Energy Association forum May 23, Senator Jeff Bingaman (D-NM) said that he may be amenable to congressional preemption of the Environmental Protection Agency's authority to regulate greenhouse gas emissions from power plants in exchange for Republican support of his Clean Energy Standard Act of 2012 (S. 2146) or another strong CES, noting that he preferred a congressional solution to emissions reductions, as such an approach could be more economically efficient and allow utilities more discretion to determine how they want to pursue reductions. The March 1 legislation would require utilities to obtain 24 percent of their power from clean sources in 2015, a requirement that would increase 3 percent each year through 2035. Most supporters of the bill, including Senator Bingaman and his staff, have conceded that it is unlikely to pass in its current form during this year's Congress, and debates are primarily academic, though the Senate Energy and Natural Resources Committee did hold a hearing last week to examine the measure as well as the Department of Energy's Energy Information Administration analysis of it.

House CES Forthcoming

Representatives Ed Markey (D-MA) and Peter Welch (D-VT) plan to introduce legislation creating a clean energy standard that leans in the direction of renewable energy this week. The measure adopts President Obama's CES target of 40 percent by 2025, but excludes natural gas, nuclear, clean coal, and waste to energy, and relies on renewable energy and energy efficiency in the bill.

Senate Farm Bill Introduced

On May 24, Sen. Debbie Stabenow (D-MI) formally introduced the 2012 farm bill (S. 3240) in the Senate, with the Congressional Budget Office claiming the new bill will save \$23.6 billion over 10 years compared to the last bill. The savings come primarily from revenue and crop insurance changes, like a 10% supplemental coverage option deductible under crop insurance. CBO estimates are based on the bill becoming law in 2012, which is the date Congressional leadership is seeking; however, it seems unlikely the bill will be passed before the previous farm bill expires on September 30.

House Appropriations Schedule, Energy & Water

In a May 25 memo, House Majority Leader Eric Cantor (R-VA) confirmed that the House will soon take up four of the twelve appropriations bill reported out of the House Appropriations Committee. Cantor indicated that it would however, be very difficult to take up all three before the next fiscal year begins October 1, and even mentioned the possibility of a continuing resolution. The fiscal year 2013 Energy and Water Development Act, with \$26.3 billion for the Energy Department and a host of environmental riders including light bulb efficiency amendments, may see the floor on May 31 or June 1. The Senate's version of the bill, with \$33.4 billion for the Energy Department, was approved in April, and does not include the environmental riders contained in the House version.

Inhofe Amendment Targets Navy's Biofuels Push

On May 24, the Senate Armed Services Committee passed a Department of Defense authorization amendment from Sen. James Inhofe (R-OK) restricting the amount of money the Pentagon can spend on biofuels on a per-gallon-basis, echoing previously passed House measures. Another amendment would limit the Navy's ability to participate in an interagency agreement that includes a commitment to invest \$510 million in drop-in biofuels. The legislation, not yet publicly available, is expected to reach the Senate floor in July.

Upcoming Hearings

The House Rules Committee meets May 30 to consider the FY2013 energy and water spending bill.

The House Energy and Commerce Subcommittee on Environment and the Economy and the Subcommittee on Energy and Power will hold a May 31 hearing on policies and government oversight of the Nuclear Regulatory Commission. NRC Chairman Gregory Jaczko is scheduled to appear.

The Senate Commerce Committee will hold a hearing June 6 on the European Union's Emissions Trading Scheme, which includes the application of fees to airlines based on carbon emissions. A bill

prohibiting U.S. airline participation in the scheme has passed the House, while a Senate bill from Commerce Committee member John Thune (R-SD) has been pending since December.

Department of Energy

AC Challenge

The Department of Energy announced May 24 that Daikin McQuay's Rebel rooftop unit system is the first to meet the agency's Rooftop Unit Challenge. Five manufacturers are participating in the challenge to commercialize highly efficient commercial air conditioners that satisfy an agency-issue specification for energy savings and performance. The companies have until next April to submit a product for independent evaluation that must reduce energy use by as much as 50 percent over current standards.

Small Business Innovation Grants

During a May 24 tour of Arkansas Power Electronics International, Deputy Secretary of Energy Daniel Poneman announced \$11 million in innovation research and technology grants of up to \$150,000 for 75 innovative research projects to 67 businesses across the country. Over the past year, the Department of Energy has supported \$8 billion in contracts to over 7,000 small businesses. Almost \$6 million of the total funding will go to 38 small businesses across the country focused on advancing energy efficiency and renewable energy technologies.

Energy Savings Contract

On May 24, the Department of Energy announced an Energy Savings Performance Contract project awarded by the Federal Aviation Administration's Northern California Terminal Radar Approach Control facility to NORESKO, LLC. The project will leverage almost \$1.9 million in private sector investments for energy efficiency and water conservation measures at the Northern California facility. The new project includes a power purchase agreement that will help to finance an onsite, 1MW photovoltaic solar energy system, bringing the total contract value to \$9 million.

Department of Interior

Oil Shale Development Rule

The Department of Interior's Bureau of Land Management sent May 16 a proposed rule on oil shale development to the White House Office of Management and Budget for review. The draft rule would update regulations adopted in 2008 for commercial development of oil shale. If approved by OMB, the proposed rule would undergo a public review and comment period.

RI Undersea Transmission Line Interest

The Department of Interior issued a request May 22 to determine whether there is competitive interest in the construction of an undersea transmission line to connect a 30 MW wind farm off the coast of Rhode Island. Providence, Rhode Island-based Deepwater Wind proposed the Block Island Transmission System, and has applied for a right of way eight nautical miles long and 200 feet wide in federal waters on the Outer Continental Shelf. The line would connect to the farm, a five-turbine demonstration scale wind project located about three miles southeast of Rhode Island's Bloc Island. Construction is expected to begin in 2013.

Tribe Opposes Wind Project

The Quechan Tribe of the Fort Yuma Indian Reservation filed a complaint May 14 in the U.S. District Court for the Southern District of California seeking to overturn the Interior Department's Bureau of Land Management's recent approval of the Ocotillo Wind Energy Project. The tribe is accusing the bureau of violating the Federal Land Policy and Management Act, the National Historic Preservation Act, the National Environmental Policy Act, and other laws, saying that the 315 MW project, which includes 112 turbines over 12,436 acres, and its related infrastructure would harm culturally significant tribal archaeological sites and burial grounds. San Diego Gas and Electric Co. already has signed an agreement to purchase electricity from the facility.

Environmental Protection Agency

Biomass Exclusion from GHG Permitting Acceptable

The National Association of Clean Water Agencies filed an amicus brief May 21 finding that the Environmental Protection Agency has the authority to exclude sources that burn biomass and other biogenic fuels from greenhouse gas permitting requirements as it has not yet determined that burning biomass, biosolids, and biogases results in more life-cycle greenhouse gases than letting materials decompose naturally. The agency issued a final rule last July that exempts until July 21, 2014, new and modified facilities that burn wood waste or landfills with emissions from decomposing biomass from requirements to obtain prevention of significant deterioration and Title V operating permits for their GHGs. The Center for Biological Diversity and other environmental groups challenged the agency's postponement of the permitting requirements. Intervening groups must file their briefs by June 21.

General Services Administration

New LEED Rating System Opposed

Eight House Democrats and 48 House Republicans sent a letter to the General Services Administration May 18 saying that proposed changes to a third-party rating system to certify green buildings place arbitrary restrictions on chemicals used in building products and could drive up building costs. The newest version of the Leadership in Energy and Environmental Design rating system would eliminate the use of dozens of materials and hundreds of building products. The group asked GSA Acting Administrator Daniel Tangherlini to drop the newest version unless the U.S. Green Building Council revises the proposed standards. The latest version of the LEED system is out for public comment, with a final version expected in November.

Personnel

The Senate approved May 24 Tony Clark of North Dakota and John Norris of Iowa to be members of the Federal Energy Regulatory Commission and Adam Sieminski to be administrator of the Energy Information Administration.

Nuclear Regulatory Commission Chairman Gregory Jaczko announced plans May 21 to resign as soon as the Senate confirms a replacement for him. His current term expires June 30, 2013. President Obama nominated Allison MacFarlane as his successor May 24, but Senate Majority Leader Harry Reid (D-NV), for whom Chairman Jaczko previously worked, has said that he could potentially remain in his position for the duration of his term. A confirmation hearing is still pending for Republican commissioner Christine Svinicki.

States

NE Files Suit Challenging Keystone Bill

Three Nebraska landowners filed a lawsuit in the Nebraska Supreme Court May 22 challenging the constitutionality of a recently passed bill (L.B. 1161) that would allow the Department of Environmental Quality to proceed with a route evaluation for TransCanada Corporation's proposed Keystone XL pipeline. The measure, approved by the legislature April 12 and signed by Governor Dave Heineman (R) five days later, was designed to decouple state action on the proposal from federal action and to create an expedited method of evaluating pipeline proposals in addition to the system created during a special session last year. The lawsuit charges that the bill violates the state constitution in a number of ways, including illegally delegating to the governor the power to permit the exercise of eminent domain.

NC Shale Gas Regs

Under a May 21 executive order (No. 118) from North Carolina Governor Bev Perdue (D), a group of North Carolina agencies will work to develop a framework for regulations addressing shale gas development in the state. The order calls for representatives of the state's commerce, environment, health, revenue, transportation, and law enforcement agencies to form a work group to consider what standards are needed as well as a rulemaking framework to consider a range of issues surrounding

public health and safety, environmental impacts, consumer protection, worker safety, logistics and transportation, and landowner protections.

Ohio Fracking Law to Governor

The Ohio House of Representatives passed a bill (Sub SB 315) requiring shale drillers to publicly disclose the volume and chemical content of all fluids in the hydraulic fracturing process. The bill now goes to Governor Kasich, who is expected to sign the bill into law.

Missouri Wind Tax Ruling

On May 3, the Missouri Department of Revenue ruled that an out-of-state corporation is not obligated to collect sales tax after servicing commercial wind turbines producing electricity in the state, because the corporation's blades are considered manufacturing equipment.

International

Chinese RE Investigation

China's Commerce Ministry issued a ruling May 24 that U.S. government support for six renewable energy projects violated free-trade rules. The two countries have pledged to work together to develop renewable sources, but are currently accusing each other of improperly subsidizing or protecting their manufacturers. The announcement of the results of an investigation launched in November, two weeks after Washington announced an antidumping probe of Chinese solar power equipment, gave no indication as to whether Beijing might try to impose punitive measures.

Bonn Climate Talks

During the 36th meeting of the Subsidiary Bodies to the U.N. Framework Convention on Climate Change in Bonn, Germany, last week, discussions about the agenda and leadership for the new Green Climate Fund are developing into a proxy battle between rich and poor countries, threatening to undo the deal that closed the U.N. climate summit in Durban last December. Delegates in their second week of meetings said economic constraints are hindering discussions on post-2020 greenhouse gas reduction targets, and more negotiations are likely to follow in Bangkok in late summer. The U.N. Framework Convention on Climate Change announced earlier this month that the first meeting of the Green Climate Fund board, originally scheduled for May 31, would be pushed back to late June or early July because selection of the 24 board members was delayed.

Russia to Join Nuclear Agency

The Russian Federation completed formalities May 23 to join the Organization for Economic Cooperation and Development's Nuclear Energy Agency starting January 1, 2013. Russia will become the 31st member country of the NEA and its data bank. It will join the World Trade Organization in 2012, but also faces 22 wide-ranging policy reviews by OECD to access its fitness to become a full member of the economic policy think tank.

Short-Lived Pollutants Pledge

Group of Eight leaders pledged at the conclusion of their May 18-19 meeting in Camp David, Maryland, to curb black carbon, methane, and other short-lived pollutants linked to carbon change. The pledge is designed to enhance global action to reduce emissions from the short-lived pollutants, as more than a third of the rise in global temperature is considered to be caused by them.

U.S. Rio+20 Participation Unclear

With the Rio+20 summit a month away, the White House has not yet decided whether President Obama will attend or who will lead the U.S. delegation. The conference begins June 20. Speaking at a Georgetown University Climate Center forum May 23, Council on Environmental Quality Chair Nancy Sutley said that one challenge in assembling the delegation is that the focus of the summit – to mark the 20th anniversary of another Rio summit that launched U.N. conventions on climate change, desertification, and biodiversity – has been unclear.

EU Electricity Repayments

On May 22, the European Commission announced that, under some circumstances, aluminum producers, steelmakers, and pulp and paper manufacturers in the European Union could be eligible for repayment, in an amount equal to 85% of increased costs, from member nations to compensate them for higher electricity costs resulting from the EU Emissions Trading System (ETS).

Japanese Emissions Targets Not Met

On May 23, the Japanese Central Environment Council announced it will not reach its emissions reduction targets given the sharply reduced nuclear generation in the country. Japan will either cut emissions by 19% or 11% depending on certain circumstances, in any case lower than the 25% reductions they sought.

Miscellaneous

AK Renewable Energy

The Center for American Progress held an event May 24 titled "Challenges and Opportunities for Renewable Energy in Alaska." The event, cosponsored by the Alaskan Federation of Natives, focused primarily on issues faced by rural Alaskan communities in producing and transmitting renewable energy.

Midwest Wind Could Reduce Electricity Prices

Americans for a Clean Energy Grid released a report May 22 finding that adding more wind power to the Midwest Independent Transmission System Operator grid could reduce wholesale electricity costs by more than 25 percent in the region by 2020 by replacing fossil fuel generation. The report, *The Potential Rate Effects of Wind Energy and Transmission in the Midwest ISO Region*, concluded that adding 20 GW of wind power would result in a \$14 per MWh market price reduction and a 40 GW addition would lead to an average energy price decrease of more than \$21 per MWh.

Keystone XL Could Raise Gas Prices

The Natural Resources Defense Council released an analysis May 22 concluding that U.S. consumers will face higher gasoline prices if the Keystone XL tar sands pipeline from Canada to the Gulf of Mexico is built. The study finds that the pipeline would transport up to 830,000 barrels per day of crude oil to Gulf Coast refineries and would divert oil from midwestern refineries, which now produce more gasoline per barrel than any other region in the country.

RGGI Proposes Program Updates

The Regional Greenhouse Gas Initiative released a series of potential changes to the cap and trade program May 21, including modifications in its offset requirements, auction design, and the control period for reducing CO2 emissions. Undertaking a comprehensive review of the program, *May 2012 Request for Stakeholder Comments on Program Review*, RGGI is accepting comments from stakeholders until May 31. RGGI will propose final changes sometime this summer.

Global Fossil Fuel Emissions Rise

On May 24, the International Energy Agency released a report finding that fossil fuel combustion's worldwide carbon dioxide emissions reached 31.6 gigatons in 2011, up 3.2% from 2010 and a record. Coal accounted for 45% of those emissions, with oil at 35% and natural gas at 20%, with developing nations accounting for all of the emissions increases over 2010 numbers. Chinese emissions increased 9.3% in 2011, largely due to increased coal combustion, while United States emissions dropped by 1.7% over the same period.