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ENERGY AND ENVIRONMENT UPDATE **August 5, 2012**

Energy and Climate Debate

After a busy week in the House and Senate, including intense debate on numerous energy issues, Congress is now in recess until after Labor Day.

House Republican and Senate Democratic leaders said July 31 that they have struck a deal with the White House to pass a six-month continuing resolution before the government's fiscal year ends September 30. The agreement calls for the two chambers to pass a new continuing resolution in September that will extend for 6 months fiscal year 2012 funding, reflecting the funding called for in last year's debt limit deal. The continuing resolution is needed because none of the regular fiscal year 2013 appropriations bills have been sent to President Obama's desk for his signature.

After a week of negotiations and amendments, on August 2 the Senate Finance Committee eliminated, by a vote of 19-5, 20 tax breaks from a list of 75 as it began the first step toward tax reform with the Family and Business Tax Cut Certainty Act of 2012. Though you will find a detailed outline of the measure attached, it is worth calling out a few items here in particular. Just before the measure passed the committee, the increasingly politicized wind energy production tax credit was restored in the tax extenders package, though a heated debate in both chambers is still anticipated. The legislation includes a total of about \$18 billion for energy-related tax incentives over ten years, including renewable energy and energy efficiency initiatives such as an option for those who qualify for the production tax credit to opt for the investment tax credit instead; per-gallon credits for cellulosic biofuel, biodiesel, and renewable diesel; tax incentives for home energy efficiency improvements and the production of certain appliances that exceed current efficiency standards. Senator Debbie Stabenow (D-MI) also offered an amendment to extend the 48C Advanced Energy Manufacturing Tax Credit by \$5 billion and allow biobased manufacturing to qualify for the credit.

The Senate failed to end a filibuster August 2 on Senator Joe Lieberman's (I-VT) Cybersecurity Act of 2012 (S. 3414), voting 52-46.

The House passed, 256-171, legislation August 1 to extend the 2001 and 2003 Bush tax cuts through 2013. The measure has little chance of passage in the Senate, as the Senate passed a measure the previous week allowing tax increases on top earners.

When it returns September 10 after the August recess and the political conventions, the Senate will resume work on the continuing resolution as well as the tax extenders package and the cybersecurity bill. Though congressional leaders have made significant progress on all three measures, with political

officials departing just a few weeks later for final moments on the campaign trail, time will be tight to accomplish the three pieces of legislation, thus leaving extenders and potentially cybersecurity until the post-election lame duck session.

Congress

Senate Appropriations Approves Defense Spending

The Senate Appropriations Committee approved, 30-0, a defense appropriations bill August 2 that contains \$70 million in funding for the Navy's portion of an interagency program with the Navy and departments of agriculture and energy to invest \$510 million over several years to encourage commercial-scale biofuel production. Senator John McCain (R-AZ) authored a successful amendment to the measure that would block funds for the Navy portion of the program, but biofuels supporters led by Senators Patty Murray (D-WA), Susan Collins (R-ME), and Mark Udall (D-CO) have vowed to strip that language when the authorization bill comes to the floor.

Emergency Energy Flexibility

The House passed the Resolving Environmental and Grid Reliability Conflicts Act of 2012 (H.R. 4273) August 1 by a voice vote. The measure would waive environmental violations if a power plant were ordered to operate during an emergency.

Committee Approves No More Solyndras

The House Energy and Commerce Committee approved, 29-19, the No More Solyndras Act (H.R. 6213) August 1. The legislation would phase out the Energy Department's loan guarantee program, but allow the agency to process applications that are already in the pipeline and use its \$34 billion in loan guarantee authority, paving the way for consideration of the bill on the House floor in September. Committee Democrats argued that the program should be reformed instead of eliminated.

EPW Climate Hearing

The Senate Environment and Public Works Committee held a climate science hearing August 1 to discuss recent research on rising global temperatures and reports of an increasing number and severity of extreme weather events.

Legislation Shields U.S. Airlines from EU ETS

The Senate Commerce, Science, and Transportation Committee unanimously approved legislation (S. 1956) July 31 to bar the European Union from extending its Emissions Trading System to American airlines after Senator John Thune (R-SD) added language supporting a global approach to curbing the sector's greenhouse gas emissions. Even with Senate passage, the measure will need to be reconciled with a similar bill (H.R. 2594) the House passed last October.

McCain Opposes Great Green Fleet

Senator John McCain (R-AZ) sent a letter July 27 to Navy Secretary Ray Mabus charging that the Navy's July 19 Great Green Fleet demonstration, which featured the operation of aircraft and surface ships using advanced biofuels, was not authorized by Congress. The letter comes two months after the Senate Armed Services Committee passed the National Defense Authorization Act for Fiscal Year 2013 (S. 3254) and almost three months after the House passed its version of the bill (H.R. 4310); both bills would restrict the Pentagon's ability to purchase biofuels.

Progress on Farm, Drought Bills

House leaders pulled the one-year extension of the 2008 farm bill (H.R. 6228) from the House Rules Committee's agenda July 31 under criticism from farm groups. House leaders had proposed the measure July 27, and House Agriculture Committee Chairman Frank Lucas (R-OK) said it would provide a route to conference with the Senate on a five-year farm bill. On August 2, the House approved, 223-197, legislation (H.R. 6233) to provide \$383 million in aid to help livestock producers hurt by the widespread drought. Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI) said last week that she would work on a bipartisan disaster relief bill if the chambers cannot make progress on a farm bill by September; the 2008 bill expires September 30.

2012 Ethanol Requirements

156 members of the House sent a letter August 1 to Environmental Protection Agency Administrator Lisa Jackson asking her to waive the renewable fuel requirements for 2012 because the drought has devastated corn crops. The ethanol industry rejected calls the following day to waive the 2012 requirements of 15.2 billion gallons, saying that it will be able to supply sufficient quantities of ethanol despite the drought.

Clean Air Act Implementation Tardiness Concerns

During a Clean Air Act forum convened by Representative Ed Whitfield (R-KY) August 2, state regulators took issue with the Environmental Protection Agency's history of not acting on state implementation plans within 18 months. Witnesses argued that the agency does not face consequences when it misses deadlines, but states do if they do not submit their plans on time. The agency has been sued for missing deadlines, and has settled suits by agreeing to act under new, court-approved deadlines. The lawsuits, however, prioritize the order the agency will act on its implementation plan backlog, instead of letting states prioritize on which plans to act.

Inhofe Challenges Proposed EPA Carbon Dioxide Rule

Senator James Inhofe (R-OK), ranking member of the Senate Environment and Public Works Committee, in an August 2 letter urged the Environmental Protection Agency to withdraw the carbon dioxide standards for new power plants it proposed in April. Though it is expected that new natural gas-fired coal plants will be able to meet the proposed standard without the need for additional controls, new coal-fired plants would have to install carbon capture systems to comply. Senator Inhofe's letter raises several questions about the proposal, including whether the Energy Department agrees that carbon capture for coal-fired plants is viable. The letter requests a response by August 31.

Legislation Introduced

Senator Jeff Bingaman (D-NM) introduced legislation (S. 3459) July 31 to amend the Department of Energy High-End Computing Revitalization Act of 2004 to improve the high-end computing research and development program of the Department of Energy.

The following day, Senator Jeff Bingaman (D-NM) introduced legislation (S. 3469) to establish a new organization to manage nuclear waste, provide a consensual process for siting nuclear waste facilities, and ensure adequate funding for managing nuclear waste. The measure is based on recommendations the Department of Energy's Blue Ribbon Commission released earlier this year.

A bipartisan group of 24 senators led by Senators John Hoeven (R-ND), Kent Conrad (D-ND), and Max Baucus (D-MT) introduced the Coal Ash Recycling and Oversight Act of 2012 August 2. The measure would establish federal standards for the management, disposal, and oversight of coal ash, creating a state permitting program under the Resource Conservation and Recovery Act; states could also grant permitting authority to the Environmental Protection Agency.

Representative Jim McDermott (D-WA) introduced the Managed Carbon Price Act of 2012 August 2. The bill calls for a carbon tax on fossil fuels but refunds 75 percent of revenues to consumers, with the remaining 25 percent directed to deficit reduction. The measure would reduce greenhouse gas emissions 80 percent from 2005 levels by 2050. Though the legislation is unlikely to move this session, Congressman McDermott introduced it in anticipation of tax reform negotiations in 2013.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a field hearing August 6 on gasoline prices and margin dynamics within Vermont. Witnesses include Ben Brockwell, director of data, Oil Price Information Service, Wall, NJ; Rob Leuck, vice president and regional manager, Costco edirector, Franklin County Senior Center, St. Albans, VT; and Gail Horne, owner, Keelers Bay Variety Store, South Hero, VT.

The Senate Energy and Natural Resources Committee will hold a field hearing August 17 to examine the current and future impacts of climate change on the Intermountain West, focusing on drought, wildfire frequency and severity, and ecosystems.

Department of Energy

First Quarter Emissions Down

The Energy Information Administration released its Monthly Energy Review August 1, finding that domestic CO₂ emissions from power plants, vehicles, and other energy-related use continues to decline, with emissions down nearly eight percent in the first quarter of 2012 from the same period last year. The first quarter total of 1.4 billion MT of energy related CO₂ was the lowest total for any January to March period since 1992, and is largely due to reduced demand for heating oil because of a mild winter, a drop in coal combustion emissions as utilities switch to natural gas, and reduced gasoline consumption.

19 ARPA-E Projects

ARPA-E's Principal Deputy Director Eric Toone announced August 2 funding for 19 new projects that will focus on innovations in battery management and energy storage. The projects are supported through two new ARPA-E programs: Advanced Management and Protection of Energy Storage Devices and Small Business Innovation Research.

Transportation Sector Advances Study

The National Petroleum Council presented a technical study August 1 to Energy Secretary Steven Chu concluding that the internal combustion engine will be around for decades to come and that there is no clear way to reduce greenhouse gases by 50 percent in the transportation sector by 2050. Secretary Chu requested in September 2009 that the council undertake a study, *Advancing Technology for America's Transportation Future*, that would provide advice on how to accelerate alternative vehicle fuels and technologies through 2030 in the transportation sector; he supplemented his request in April 2010, seeking advice on how to reduce GHG emissions in the domestic transportation sector 50 percent by 2025 relative to 2005 levels.

Department of State

Airlines Seek Government Action Against EU ETS

A coalition of American airlines and aviation industry organizations sent a letter July 30 to the departments of State and Treasury asking them to take action to reverse the European Union's decision to include aviation greenhouse gas emissions in its Emissions Trading System. The group asked the United States to file a challenge under the Convention on International Civil Aviation, or the Chicago Convention, as under the convention, any government party to the treaty can bring a disagreement to the International Civil Aviation Organization. The two agencies hosted 16 countries that oppose including airlines in the EU ETS at a meeting July 31-August 1 on the trading system.

Flexibility Crucial for Climate Success

Speaking at Dartmouth College's Leading Voices in U.S. Foreign Policy lecture series August 2, Todd Stern, the U.S. State Department's special envoy for climate change, said that an international agreement on climate change has to be flexible and able to evolve to be successful at limiting the global rise in average temperature to less than 2 degrees above preindustrial levels.

Environmental Protection Agency

Mercury Standards for New Plants Stayed

The Environmental Protection Agency published a notice August 2 staying the mercury and air toxics standards for new power plants until November 2. The agency announced July 20 that it agreed to reconsider the standards for new coal and oil-fired plants, following industry complaints that the mercury limits are too low to be continuously monitored, thus potentially preventing new coal-fired plants from being built. The agency does not expect to complete the reconsideration process until next March.

SO2 Attainment Designations Delayed

The Environmental Protection Agency issued a notice July 27 delaying attainment designations for the 2010 primary sulfur dioxide national ambient air quality standard for one year. The new deadline is June 3, 2013. The Clean Air Act requires the agency to issue area designations two years after promulgating an air quality standard; thus the June 2010 rule required designations by June 2012.

RFS One Year Waiver Requested

Nineteen livestock, poultry, and dairy industry groups petitioned the Environmental Protection Agency July 30 to waive for one year the requirements of the renewable fuel standard because the recent drought has reduced corn production, thus increasing corn prices by 40 percent since June. Senator Kay Hagan (D-NC) is leading a letter to Administrator Lisa Jackson requesting a waiver because of the conditions. The agency is requiring 15.2 billion gallons of renewable fuels in the country's fuel supply this year.

Federal Energy Regulatory Commission

FERC Marching Forward

Federal Energy Regulatory Commission Chairman Jon Wellinghoff said July 31 that he plans to open the nation's electric grid to more demand-response programs, distributed generation, and renewable energy without Congressional action. The commission will hold five regional technical conferences on the coordination between natural gas and electricity industries this August.

Personnel

The White House announced August 3 that Cass Sunstein, administrator of the Office of Information and Regulatory Affairs in the White House Office of Management and Budget, will return later this month to his previous post at Harvard Law School.

States

PA Utility to Close Impoundment

FirstEnergy Generation Corporation will pay an \$800,000 civil penalty and close an impoundment where it disposes of coal ash from the Bruce Mansfield power plant in western Pennsylvania under a July 27 settlement with the Pennsylvania Department of Environmental Protection in the U.S. District Court for the Western District of Pennsylvania. At issue was the potential for groundwater and surface water contamination as a result of leaks from Little Blue Run, an unlined 1,700-acre coal ash impoundment in Pennsylvania and West Virginia.

States Should Pursue Clean Energy

The National Governors Association released a white paper July 30 saying that states can pursue several policies that reduce energy consumption and increase renewable energy production despite budgetary constraints. The report, *Ten Trends to Track: State Policy Innovations to Advance Energy Efficiency and Renewable Energy*, suggested policies such as establishing incentives for utilities to create energy efficiency programs, removing bureaucratic barriers like permitting requirements for residential renewable energy installations, on-bill financing, and net metering.

CA Evaluates Community Pollution Impact

The California Environmental Protection Agency unveiled the California Communities Environmental Health Screening Tool July 30. The methodology evaluates the cumulative impacts of air pollution, pesticides, contaminated water, and waste sites on communities, and can help state and local officials to prioritize cleanup and abatement projects and direct resources to communities with the greatest needs.

Cincy Bans Deep Well Injection

The Cincinnati City Council unanimously adopted an ordinance (No. 314-2012) August 1 banning deep well injection of fracking fluids, making it the first Ohio city to prohibit underground wastewater storage within municipal limits. The Ohio Department of Natural Resources has sole permitting and regulatory

authority over oil and gas drilling, but the city council is acting in its role as protector of human health and safety.

NC Sea-Level Law

North Carolina Governor Bev Perdue (D) announced August 1 that legislation (H.B. 819) that prohibits state agencies from implementing policies based on sea-level change until July 2016 will become law. Earlier versions of the bill would have required state planning and regulatory decisions to be based on historical data rather than scientific scenarios

MS Court Blocks CCS Rate Increase

The Mississippi Supreme Court unanimously denied July 31 Mississippi Power the rate increase it requested for a carbon capture coal plant in Kemper, Mississippi. Despite \$270 million in Department of Energy support, the plant has faced local and environmental opposition and the company plans to appeal the decision.

NE RE Coordination

The governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont approved a resolution July 30 at the New England Governors' Conference to direct the New England States Committee on Electricity to develop and implement a work plan on behalf of the states that will result in the 2013 release of a request for proposal for extensive and cost-effective renewable energy resources. The conference will convene a team of energy officials and other state representatives to finalize details of the competitive, coordinated, regional procurement over the next year.

MA RE Law

Massachusetts Governor Deval Patrick (D) signed into law energy legislation (S.B. 2395) August 3 that expands incentives and opportunities for developing wind, solar, hydro, and other renewable power generation to serve the state's electricity consumers. The measure also includes provisions to manage some of the drivers of energy cost increases.

Court Allows Congress More Time on Yucca Mt.

The U.S. Court of Appeals for the District of Columbia Circuit held a lawsuit in abeyance on August 3, giving Congress four more months to decide how to address the shutdown of Nuclear Regulatory Commission licensing work on the Yucca Mountain radioactive waste repository in Nevada. The opinions of the majority of judges on the court strongly suggests that if Congress does not unequivocally prohibit work at Yucca Mountain, the court will order the commission to resume its review of the Energy Department's operating license application. Though the court's decision allows congress more time to make a determination in the current budget cycle, Congress has given no indication that it plans to do so.

International

Most Gothenburg Obligations Met

The European Environment Agency published data July 30 finding that most European Union countries met their 2010 obligations under the Gothenburg Protocol of the Convention on Long-Range Transboundary Air Pollution, but 11 fell short with excess levels of nitrogen oxides and ammonia. The protocol sets emissions limits for sulfur oxides, nitrogen oxides, ammonia, and non-methane volatile organic compounds to be achieved by 2010.

\$20 Million Indian EE Effort

India and the United States awarded last week a five-year, \$20 million contract to help India reduce greenhouse gas emissions by boosting energy efficiency and relying more on renewable energy. The contract is part of the deployment phase of the 2009 Partnership to Advance Clean Energy.

Increased Train Usage Encouraged

The International Energy Agency and the International Union of Railways issued a joint report July 26 concluding that governments should increase the role of railways in their transportation strategies to take advantage of low trains emissions. The report, *Railway Handbook 2012 Energy Consumption and CO2*

Emissions, combines data on fuel combustion CO₂ from some of the 28 member countries of the International Energy Agency with some of the International Union of Railways' 200 companies and associations.

EU Efficient Natural Resource Use

The European Commission announced last week that it is seeking ideas for identifying the best indicators for comparing how efficiently European Union member states use natural resources. The Commission proposed comparing the resource efficiency of EU countries, potentially setting resource efficiency targets, in a September 2011 action plan. The commission will submit a formal proposal on instituting resource efficiency indicators to the European Parliament and member states by the end of next year.

No Progress on HFC Limitations

Delegates to a Montreal Protocol working group at the July 23-27 Bangkok talks, the first major United Nations environmental negotiations since the June 22 close of the Rio+20 summit, failed to make much progress on limiting the impacts of hydrofluorocarbons, with India, China, and Brazil leading efforts to stall progress. Talks will continue in November at the 24th Meeting of the Parties to the Montreal Protocol.

Aviation GHG Emissions in EU Cap-and-Trade

A group of environmental organizations, including the Sierra Club and the Natural Resources Defense Council, asked President Obama in an August 3rd letter not to challenge a decision by the European Union to include greenhouse gas emissions from aviation in its cap-and-trade system. According to an Obama administration official, the U.S. government reserves the option to file such a challenge, but there are no plans to do so.