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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

Congress returned from the August recess and the political conventions September 10 for a brief work period during which it will focus primarily on passing a six-month continuing resolution.

The continuing resolution, as agreed to prior to the recess by leadership in both chambers as well as the president, would extend fiscal year 2012 funding levels for six months, thus allowing the federal government to remain open and funded through the elections, or until March 27, 2013. The measure was introduced in the House September 10, and in addition to funding for energy and environment programs, continues to contain a prohibition that bars the Department of Energy from enforcing light bulb efficiency standards. Last December's budget agreement (H.R. 2055) included a measure banning the agency from using funds to enforce efficiency standards for 100-watt light bulbs and other incandescent bulbs until the 2012 fiscal year ends September 30. The House version of the bill, which passed September 14, also included \$100 million in support for the American Centrifuge Project, an uranium enrichment project in Piketon, Ohio. The Senate expects to vote on the continuing resolution September 19.

The House may also pass the Stop the War on Coal Act of 2012 (H.R. 3409) this week. The five-bill package, which includes provisions delaying Environmental Protection Agency and Interior Department rules, as well as language supporting coal ash, is a message vote, as the Senate will not take up anything similar to it.

With Congress departing next week for final campaigning before the November elections, most other legislative negotiations will have to wait until the lame duck session. One of the primary debates scheduled to take place at the end of the year are the much-discussed tax extenders. In addition to attempting to avoid the fiscal cliff, House and Senate leaders will discuss the expiring production tax credit, a per gallon tax credit for cellulosic biofuel, and a number of other energy-related provisions. Senate Majority Leader Harry Reid (D-NV) had previously said that he intended to bring the Senate Finance Committee's \$205 billion tax extenders bill (S. 3521) to the floor ahead of November 6, but, as the chamber will only be in session through September 21, he hopes to act on the bill as soon as possible, which will be during the lame duck session.

Other issues that may receive some attention during the lame duck session include energy efficiency legislation; defense reauthorization, particularly the Navy's use of biofuels; and the Farm bill, which includes an energy title and expires at the end of the month.

Congress

Nuke Reforms on Schedule

Speaking before the Senate Environment and Public Works Committee September 12, Allison Macfarlane, the new chair of the Nuclear Regulatory Commission, pledged that she will work toward implementing all post-Fukushima safety reforms for American nuclear power plants within five years. During the hearing, Committee Chair Barbara Boxer (D-CA) indicated that she would keep pressure on the commission to make sure that they implement the reforms by 2016; additional hearings on safety reforms and waste disposal are in the works.

EPA E15 Authority Challenged

Representatives Jim Sensenbrenner (R-WI) and Chip Cravaack (R-MN) sent a letter September 10 to the Environmental Protection Agency questioning its authority to set minimum purchase requirements for filling stations selling gasoline containing 15 percent ethanol. The House Republicans charge that the agency overstepped its Clean Air Act authority when it required gasoline retailers selling E15 and E10 from a single dispenser to require customers to purchase at least four gallons as part of their misfueling prevention plans. They asked the agency to respond by September 24.

PMA Modernization Faces Uphill Battle

During a September 11 House Natural Resources Committee hearing, lawmakers and utility customers expressed concern over Energy Secretary Steven Chu's March 16 plan to use modernize the four federal power marketing administrations, saying that they want him to delay implementation, which is scheduled to begin at the end of the year. Appearing before the committee, Lauren Azar, a senior policy advisor to the secretary, said that the agency is aiming to improve efficiencies and reduce costs. The most contentious part of the debate is whether the low-cost hydropower from federal dams the administrations sell and deliver will be used to subsidize wind and solar development in the Western United States.

EPA Grants Opposed

Renewing their call for ending Environmental Protection Agency grants in China and other countries, House Republicans argued September 11 that the small savings could be applied to reducing the deficit. Representative Ed Whitfield (R-KY), chair of the House Energy and Commerce Subcommittee on Energy and Power, said at the hearing that the Environmental Protection Agency awarded \$78.8 million in grants to environmental projects outside the United States from fiscal years 2008 to 2011. The agency has awarded more than \$50 million in international grants for fiscal years 2010 and 2011, and Chairman Whitfield's legislation, the Accountability in Grants Act of 2012 (H.R 4255) would bar it from awarding financial assistance to projects outside the country and its territories.

No More Solyndras Passes House

The House approved, 245-161, the No More Solyndras Act (H.R. 6213) on a largely party-line vote September 14. The measure would end a Department of Energy loan guarantee program but would allow billions of dollars in pending loan guarantee applications for nuclear and fossil energy projects to continue. The legislation would prohibit the agency from making new commitments for loan guarantee applications after 2011, but about 50 pending applications could still be considered. Pending applications include requests for an \$8.3 billion nuclear reactor in Waynesboro, Georgia; \$2 billion for a uranium-enrichment project in Piketon, Ohio; 1.7 billion for a coal gasification project in Rockport, Indiana; and \$2 billion for a coal-to-liquid plant in Medicine Bow, Wyoming. The program has \$30.5 billion in authority for nuclear and fossil energy projects, and about \$4.5 billion remains for renewable energy projects.

Legislation Introduced

Senator Pat Roberts (R-KS) introduced legislation (S. 3529) September 11 to amend the Clean Air Act to clarify a certain provision relating to the prevention of accidental releases.

Senator Richard Blumenthal (D-CT) introduced legislation (S. 3531) September 12 to amend the Internal Revenue Code of 1986 to increase, expand, and extend the credit for hydrogen-related alternative fuel vehicle refueling property and to increase the investment credit for more efficient fuel cells.

The same day, Senators Amy Klobuchar (D-MN) and John Hoeven (R-ND) introduced legislation (S. 3535) to direct the Secretary of Energy to establish a pilot program to award grants to nonprofit organizations to retrofit their buildings with energy efficiency improvements. The measure appropriates \$50 million annually through 2016.

Representatives Jerry McNerney (D-CA) and Jim Costa (D-CA) introduced legislation (H.R. 6378) to provide for the designation of, and the award of grant with respect to, air and health quality empowerment zones.

Representatives John Larson (D-CT) and Paul Tonko (D-NY) introduced legislation (H.R. 6384) to amend the Internal Revenue Code of 1986 to increase, expand, and extend the credit for hydrogen-related alternative fuel vehicle refueling property and to increase the investment credit for more efficient fuel cells.

Representatives Jim Gerlach (R-PA) and Richard Neal (D-MA) introduced legislation (H.R. 6398) September 13 to amend the Internal Revenue Code of 1986 to modify and extend the credit for nonbusiness energy property.

Upcoming Hearings

The Senate Energy and Natural Resources Subcommittee on Water and Power will receive testimony September 19 on S. 3265, the bill to collect land use fees; H.R. 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2012; S. 3464, the Mni Wiconi Project Act Amendments of 2012 in South Dakota; and S. 3483, the Crooked River Collaborative Water Security Act in Oregon.

The House Subcommittee on Investigations will hold a September 20 hearing to discuss the effects of international technology transfer on U.S. research and development.

Department of Commerce

Net-Zero Home

The National Institute of Standards and Technology unveiled September 14 a new laboratory designed to demonstrate that a typical-looking suburban home for a family of four can generate as much energy as it uses in a year. The test facility is designed to improve the testing of energy efficient technologies.

Department of Energy

SunShot Prize

The Department of Energy launched the SunShot Prize September 12 to install solar energy systems at a fraction of today's price. The competition makes a total of \$10 million in cash awards available to the first three teams that repeatedly demonstrate that non-hardware costs can be as low as \$1 per watt for small scale photovoltaic systems on American homes and businesses.

Department of Interior

Fracking Comments

The Independent Petroleum Association of America, the Western Energy Alliance, and other associations filed joint comments last week with the Interior Department regarding its proposed rule to update federal fracking regulations and related oil and gas drilling activity on federal lands. The group, as well as the Interstate Oil and Gas Compact Commission, which represents 38 state governments, told the agency that the proposed rule would be duplicative and unduly burdensome. States generally regulate the drilling, including activities occurring on federal lands within their borders, but the Bureau of Land Management unveiled a proposal May 4 to update federal regulations with provisions that would require pressure testing, extensive reporting, chemical public disclosure, and bureau approvals.

Methane Reductions Urged

The Western Environmental Law Center, the Center for Biological Diversity's Climate Law Institute, and the Clean Air Task Force filed a petition September 11 calling on the Bureau of Land Management to require oil and gas companies operating on public lands to reduce methane emissions. The petition encourages the bureau to require oil and gas operators to install available pollution control measures that would reduce methane gas leaked during the drilling process.

Department of Transportation

\$59.3 Million for Green Transit

Transportation Secretary Ray LaHood announced September 14 \$59.3 million to help transit agencies go green. The Clean Fuels Grant Program funds will go to 27 projects to replace old diesel buses with more fuel efficient vehicles, build fuel stations that can accommodate alternative fuel vehicles, and purchase clean fuel hybrid bus batteries. The agency received 146 applications totaling \$516 million.

Environmental Protection Agency

Mercury Challenge on Hold

The U.S. Court of Appeals for the District of Columbia Circuit granted the Environmental Protection Agency's request September 12 to hold litigation challenging the agency's air toxics standards for new power plants in abeyance while it completes an administrative reconsideration of the standards. The emissions limits for new sources are more stringent than for existing sources, and new plant issues are being litigated separately from other challenges to the rule. The agency issued a final rule in December setting numeric emissions limits for mercury, filterable particulate matter as a surrogate for toxic metals, and hydrogen chloride as a surrogate for acid gases. It plans to complete the reconsideration process by March.

GHG Permitting Challenged

The American Petroleum Institute, American Fuel and Petrochemicals Manufacturers, National Association of Manufacturers, and the National Oilseed Processors Association filed suit in the U.S. Court of Appeals for the District of Columbia Circuit September 10 challenging the third step of the Environmental Protection Agency's tailoring rule. The July 12 rule limits greenhouse gas permitting to the largest industrial sources because state permitting authorities need more time to develop the necessary infrastructure. The agency plans to complete a study of the administrative burdens of the permitting program by April 30, 2015, with the next threshold review coming a year later.

RFS Allocations Considered

The Environmental Protection Agency is seeking comments on greenhouse gas emissions allocation methods by an ethanol producer that plans to import steam from a coal-fired power plant. Dakota Spirit AgEnergy petitioned the agency last October to determine if its ethanol would meet the life-cycle emissions requirements of the renewable fuel standard. The agency will accept comments until October 11.

TX Standing Questioned

The Clean Air Task Force, Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club intervened on behalf of the Environmental Protection Agency in a September 7 brief filed in the U.S. Court of Appeals for the District of Columbia Circuit. The environmental groups charged that Texas lacks standing to challenge the agency's decision to disapprove its state implementation because it does not address greenhouse gases on its own already, and does not intend to administer a permitting program by itself. Texas sued the agency after it issued an interim rule in 2010 removing the state's prevention of significant deterioration permitting authority for GHGs followed by a final rule in May 2011. Texas' reply brief is due September 21.

RFS Waiver Comment Period Extended

The Environmental Protection Agency announced a comment extension September 11 on requests for a renewable fuel waiver in response to the drought; it will accept comments until October 11. The agency

announced the extensions after receiving several requests for additional time; it currently requires that 15.2 billion gallons of renewable fuels be blended into the fuel supply in 2012.

Air Toxics Determination Challenged

During oral arguments before the U.S. Court of Appeals for the District of Columbia Circuit September 12, the Sierra Club asked the court to vacate the Environmental Protection Agency's determination that it had satisfied Clean Air Act requirements to reduce emissions of certain air toxics. The Sierra Club contends that despite publishing a determination to that end, the agency has not actually satisfied the requirements to set standards to reduce polychlorinated biphenyls, polycyclic organic matter, and hexachlorobenzene.

Additional Time for Ozone Review

The Environmental Protection Agency announced last week that will need two additional months to finalize air quality standards for ozone, issuing a final rule in September 2014 instead of July. The agency set the ozone national ambient air quality standards at 0.075 parts per million in 2008, but the Obama administration announced that it would reconsider the standards. In September, the administration dropped the reconsideration because it did not want to increase regulatory burdens.

Advisory Panel Suggests Permitting Comments

In its interim report, *Air Permitting Streamlining Techniques and Approaches for Greenhouse Gases*, the Clean Air Act Advisory Committee proposed that the Environmental Protection Agency accept public comments on ways to streamline the greenhouse gas permitting process. The committee's report did not offer any of its own recommendations for streamlining the process, explaining that the committee lacked the time and resources to carefully examine various streamlining methods, but instead suggested that the agency review data and information that the panel has collected, propose options for streamlining the permitting process, and solicit public comment. The full advisory committee will discuss the report at its September 20 meeting.

1.28 Billion Gallons of Biodiesel for 2013

The Environmental Protection Agency released a final rule September 14 that will require that 1.28 billion gallons of biodiesel be introduced into the national fuel supply in 2013. The agency expressed confidence that its 1.28 billion gallon mandate can be met, especially given that biodiesel producers are already producing 1.3 billion gallons of fuel a year. The rule will create \$41 million in energy security benefits and between \$19 and \$52 million in air quality benefits, according to the agency's estimates.

Federal Trade Commission

Reducing Energy Barriers

The Federal Trade Commission's Office of the General Counsel and Bureau of Economics responded to the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking on *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies* last week, saying that several measures to reduce the cost of providing electricity, improve power system reliability, and lower the barriers for market entrants providing ancillary services in regional and local markets will provide incentives for more areas to undertake investments and innovations that will reduce system costs and increase system reliability.

Personnel

Looking toward potential cabinet appointments should President Obama win a second term in office, Center for American Progress Chairman John Podesta and Duke Energy CEO Jim Rogers are possible candidates to replace Steven Chu as Secretary of Energy. Environmental Protection Agency Deputy Administrator Robert Perciasepe has the inside track to replace Lisa Jackson as Administrator. We plan to offer similar predictions for the Romney campaign next week, and stay tuned as the election nears for additional developments.

States

Natural Gas Vehicles MOU

Colorado, Oklahoma, Kentucky, Louisiana, Maine, Mississippi, New Mexico, Ohio, Pennsylvania, Texas, Utah, West Virginia, and Wyoming closed a request for proposals September 7 seeking to purchase compressed natural gas-powered vehicles for their vehicle fleets. The states have signed a memorandum of understanding to join in the aggregated procurement.

Oregon DOE Adopts Alternative Fuel Vehicle Credit Rules

The Oregon Department of Energy will administer the alternative vehicle infrastructure tax credit within the Energy Incentives Program, according to rules published September 1 in the Oregon Bulletin. The energy credit equals an amount up to 35 percent of the alternative fuel project's certified cost.

International

Israel's Green Vehicles

Israel's Finance Ministry proposed a pair of tax reforms September 9 to encourage the sale of less polluting vehicles. The new measures would base sales tax on hybrid and internal combustion vehicles on a revised system of green ratings and would make "usage value" taxes on battery-powered company cars more comparable to taxes on traditional company cars. Both reforms will be open for a public comment period until the end of September, after which the finance minister could sign them into effect as of this coming January.

National Climate Action Needed

The World Bank's Vice President for Sustainable Development announced September 12 that while global companies are increasing their efforts to reduce carbon emissions and prepare for climate change impacts, government leaders have mostly delayed policy actions such as carbon taxes that are critical for addressing the challenge. According to the *Global 500 Climate Change Report 2012*, based on survey responses by 379 global companies, about 78 percent of the world's top 500 global companies are integrating climate change into their business strategies this year, up from 68 percent last year; 82 percent have set emission reduction targets. In another September 12 report, based on a survey of S&P 500 firms, *Accelerating Progress Toward a Lower-Carbon Future*, the Carbon Disclosure Project found that 61 companies have set emission reduction targets.

Canadian Power Plant Emissions

Canada published its final Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations September 12, concluding that it has relaxed the standards from the draft version issued last August because utilities would not have been able to meet the stricter limits. Environment Canada published a regulatory impact analysis with the final regulations, determining that the 420 MT CO₂/GWh emissions limit is based on a convergence decision among industry and provincial governments that most power plants could not achieve the originally proposed 375 MT limit. The standards take effect July 1, 2015, applying to new and existing plants.

EU Efficiency Legislation

The European Parliament approved, 625-20, energy efficiency legislation September 11. The legislation is designed to help the European Union reduce energy consumption 17 percent by 2020 and save as much as \$75 billion annually via reduced fuel imports. It is also expected to help boost employment because of a series of mandatory renovation requirements for some publicly owned buildings. The measure will require power companies to achieve new savings of 1.5 percent annually from 2014 to 2020 and requires companies to complete a mandatory energy audit within three years of the legislation taking effect, and to repeat the process every four years.

EU Marine Sulfur Emissions Limited

The European Parliament approved, 606-55, legislation September 11 to phase in tighter sulfur limits in shipping fuels through 2020. The legislation, which would bring European Union countries into line with updated International Maritime Organization limits, requires shipping fuels used in European waters to have a sulfur content of no more than 0.5 percent by 2020, compared to the current 3.5 percent limit.

EU Fluorinated GHGs Down

The European Environment Agency published figures September 11 demonstrating a decline from 2011 to 2010 in the production and importation, and a slight increase in exports, of fluorinated greenhouse gases in the European Union. The changes mean that EU sales of the gases, which have a global warming potential of 12,000 times that of CO₂, fell from 97,995 MT to 86,253 MT.

APEC Supports EE, RE Technology

At a September 2-9 meeting of Asia-Pacific Economic Cooperation forum leaders, the group concluded with support for technologies that increase energy efficiency and reduce greenhouse gas emissions in the context of ensuring the security and stability of energy markets and promoting green growth. Member governments called for supporting carbon capture and storage, natural gas, nuclear energy, and renewable energy from biomass.

Chinese Pollution Incidents Up

According to a September 4 Policy Research Center for Environment and Economy report, the number of serious pollution incidents among companies listed on Chinese stock exchanges has dramatically increased in the past year and public disclosure remains intermittent. The center's report, released internally in June, found that 77 companies have been responsible for 113 incidents since 2004 and that 50.6 percent of the companies did not publicly report the accidents.

EU Fracking Guidance Forthcoming

The European Commission announced September 20 that the European Union would publish legislative proposals next year to ensure that environmental law adequately addresses the environmental and health risks of fracking. EU countries are divided over the best method, with some granting licenses for exploratory drilling, while others have a moratorium on fracking.

CDM Imperative

During the Clean Development Mechanism's Executive Board Meeting last week, the independent panel created to assess the Kyoto Protocol's Clean Development Mechanism urged countries to intervene in carbon markets and strengthen their emission reduction plans. The program awards emission reduction credits to countries and companies that pay for projects that reduce emissions in developing countries. At the same meeting, the executive board proposed a policy that would allow the voluntary cancellation of emission reduction credits, and reached a consensus on two new procedures relating to the vetting of new projects and their emission reductions, as well as on an emissions baseline standard that will enhance consistency, objectivity, and predictability.

EU Biofuel Support Decreasing

The European Commission is considering legislation that could phase out the European Union's crop-based biofuels after studies have raised questions about the net impact of the fuels on reducing emissions as well as their effect on food production. The policy change will be outlined in legislation that includes indirect land use criteria for determining supported biofuels.

Chinese Carbon Trading Program

Guidelines for a voluntary carbon trading system to be implemented in China's Guangdong province were released by provincial officials September 11. The Guangdong carbon trading program, part of a national pilot program, will begin with 827 companies across nine industrial sectors: electricity, cement, steel, ceramics, petrochemicals, textiles, nonferrous metals, plastics, and paper. The province's carbon trading program will have a testing period from 2012 through 2015, a period of perfect trading rules from 2016 through 2019, and a fully trading carbon market starting in 2020. Other Chinese provinces and municipalities participating in the national program, whose goal is to set up pilot emissions trading systems by the end of 2015, include Hubei, Beijing, Chongqing, Shanghai, Shenzhen, and Tianjin,

Russia to Skip Second Kyoto Protocol Commitment

The Russian Ministry of Foreign Affairs announced September 13 that the country would not participate in a second Kyoto Protocol Commitment Period, but instead focus on creating a legally binding climate change agreement that can be established by 2015. Earlier this month, the Ministry of Natural Resources

circulated a draft presidential decree that would limit greenhouse gas emissions to 20 percent below 1990 levels by 2020. Russian businesses may be allowed to participate in foreign greenhouse gas trading programs approved by the Russian government if legislation before Russia's parliament is passed. Additionally, Russian President Vladimir Putin may announce a domestic greenhouse gas trading system as soon as September 30.

Japanese Energy and Environment Policy

Galvanized by last year's nuclear accident, Japan's Energy and Environment Council adopted a new policy September 14 promising to eliminate nuclear power by the 2030's and to significantly increase the use of renewable energy. Until last summer, when Japan shut down all 54 of its reactors, nuclear power supplied about 10 percent of the country's energy. Japan has revised its original pledge of reducing greenhouse gas emissions 25 percent by 2025 to a less aggressive target of a 20 percent reduction by 2030, and estimates that the country will decrease its total electricity output by 2030 by 10 percent compared with its 2010 levels, while reducing its energy consumption by up to 19 percent in the same time frame. Those reduction goals could be met with the development of renewable energy, energy optimization, and the use of technologies such as smart meters.

Miscellaneous

AWEA Ousts Exelon

The American Wind Energy Association removed Exelon Corporation from its board of directors September 7 because it is conducting a campaign to kill the wind industry's current top legislative priority, an extension of the expiring production tax credit. Exelon, which owns nearly 900 MW of wind power capacity, or about 2 percent of the domestic total, is the country's largest nuclear power operator, and though it opposes an extension of the 2.2 cent/KWh PTC, it still supports the development of domestic wind energy.

Solar-Using Retailers Ranked

The Solar Energy Industries Association and the Vote Solar Initiative released a report September 12 finding that Walmart, Costco, and Kohl's are the top three American retailers using solar power at their facilities. The report, *Solar Means Business: Top Commercial Solar Customers in the U.S.*, examined 42 companies that have installed solar photovoltaic systems at their facilities. Together the top 20 companies generate an estimated \$47.3 million worth of electricity each year from the installations, deploying at least 279 MW of electricity annually.

Sustainability Rankings Unused for Investment Decisions

According to a September 11 survey from SustainAbility and GlobeScan, most sustainability experts rarely or never use sustainability rankings systems for investment, purchasing, or other decisions. The report, *Rate the Raters: Polling the Experts 2012*, is part of a research initiative to evaluate corporate sustainability ratings and improve their quality and transparency, and found the Carbon Disclosure Project Leadership Index, followed by the FTSE4Good Index Series and the Dow Jones Sustainability Index, to be the most credible of the approximately 108 ratings systems in existence in 2010.

Water Quality Standards Hindering Climate Adaptation

The Water Research Foundation issued a report September 10 finding that federal laws and regulations governing water quality are hindering utilities' ability to adapt to climate change. The report, *Building a Climate-Ready Regulatory System* concludes that as water supply quantity and quality decline, meeting water standards will require more energy, and so the Environmental Protection Agency needs to include provisions in future water standards to help utilities meet energy regulations.

Preference Renewable Energy Products

A September 14 report commissioned by wind turbine manufacturer Vestas and conducted by TNS Gallup found that 85 percent of consumers want more renewable energy, and 49 percent would be willing to pay more for products made using renewable energy. The study, *The Global Consumer Wind Study 2012*, found that 74 percent of those surveyed would have a more positive perception of a product if wind

energy were the primary energy source used, and that 62 percent of respondents would be more willing to buy products from brands where wind energy was used in production.

Renewable Energy Investment Rises

Bloomberg New Energy Finance released a report September 14 finding that new investments in renewable power capacity reached \$237 billion in 2011, exceeding an estimated \$223 billion in new fossil fuel-based power generation. The report, *The Corporate Renewable Energy Index*, concluded that 38 percent of renewable electricity purchases come from renewable energy certificates and that companies are increasingly investing in on-site renewable energy.